



# Zoning Board of Appeals

December 1, 2011 – 5:30 p.m. – **Minutes**  
133 William St. - Room 314 - Conference Room

View Agenda

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## **Board Members Present:**

Ian Comerford  
Donald Gomes  
Jennifer Smith  
James Mathes  
Horacio Tavares

## **Board Members Absent:**

Annette Allard  
Michael Amaral  
Debra Raffa Trahan

## **City Staff:**

Danny D. Romanowicz, Commissioner of Buildings & Inspectional Services  
Ray Khalife, Senior Planner

## **Cases Heard:**

# 4022 – 134 State Street  
# 4043 – 121 Duchaine Boulevard  
# 4044 – 215 Query Street  
# 4045 – 406 Dawson Street  
# 4046 – 1881(A) Acushnet Avenue  
# 4047 – 1-5 Cape Street  
# 4048 – 636 Allen Street  
# 4049 – John Street

The meeting was called to order at 5:30 p.m.

Ms. Smith acting as Clerk read the opening remarks along with the general requirements for granting a Special Permit and a Variance.

Ms. Smith made a motion to have Appeal #4048 and #4049 taken out of order and heard first. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

## **#4048      A Variance**

**Petitioners: George J. Campeau & Diane T. Campeau, 636 Allen Street New Bedford, MA 02740 and Atty. Christopher T. Saunders 700 Pleasant Street New Bedford, Ma 02740** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 636 Allen Street, Assessor's Map Plot 33, Lot 55 in a Residential B District. **The petitioners propose to create a new buildable lot** which would be in violation of Chapter 9, Comprehensive Zoning Sections, 2700 (Dimensional Regulations), 2710 (General), 2711 (Lot Change), 2720 (Table of Dimensional Requirements), Appendix B/Minimum Lot Size, Rear Yard, 2750 (Yards in Residence Districts) and 2753 Rear Yards.

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated November 8, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Representing the petitioners Christopher Saunders, Esquire, 700 Pleasant Street, New Bedford, MA stated that George Campeau was present and Diane Campeau could not be present. The petitioners reside at 636 Allen Street which is one of the lots that is before the Board. There will be another public hearing for the lot adjacent. Atty. Saunders stated that the Campeaus' purchased the land in question on Allen Street in 1992 and it's their primary residence. It's a single-family home on a lot. When they purchased the property and in the Board's package is the title for the land that encompasses two (2) parcels on the deed. At the time, the Zoning plans were not what they are today and when they purchased these lots they had two buildable lots. In fact, the City of New Bedford taxed them as two (2) separate buildable lots. He stated that it has always been the Campeaus' intentions to sell them as two (2) separate lots. Unbenounced to the Campeaus the Zoning By-law changed and they did not take action before that Zoning By-law change. Mr. Campeaus recently retired. He remembers Mr. Campeau; he was a teacher at Stang teaching Latin, AP English and subjects he never took. His wife has serious medical condition, she has Rheumatoid Arthritis and under doctors' recommendations they have asked that the Campeaus relocate to a warmer climate. Their intention is to relocate to Phoenix, Arizona or that region of the country. In order to do so they have a financial hardship. George Campeau, a retired teacher from Bishop Stang, who then went onto public schools, is a man of limited means and he has a financial hardship and needs to sell these two (2) lots as two separate individual lots. Specifically, 636 Allen Street, the lot in question, is just under 5900 square feet as is and the vacant lot on John Street which is also just under 5,900 square feet. Allen Street meets the frontage requirements but does not meet square footage requirements and by creating this new lot we would also be making a non-conforming lot because we would not meet the rear setbacks. The Campeaus would meet every other setback other than the rear. There will be about a 12 foot setback. It is going to be a small backyard. The vacant lot does not meet the frontage. There is 60' of frontage and the same square footage of just under 5,900 square feet but we meet every other setback in that area. He had a photocopy of the City of New Bedford Assessor's Maps and Lots and pointed to Allen Street and John Street. He stated that he went to John Street but did not go all the way down to Westbrook Street. He went in the general area and in that area there are eleven (11) house lots that are either the same size or slightly smaller than the Campeaus' proposed two (2) lots. In fact, on that street there are only four (4) house lots that would be greater in size than what the Campeaus' are wishing to do. If you go all the way down to Westbrook Street, there are only six (6) houses on the entire street that have house lots that are bigger than the Campeaus'. The Campeaus' are consistent with what is there in the neighborhood. They are not creating smaller lots that would throw off the entire character of that neighborhood. He stated that if the Board looks at the Planning Board's Map and

went across Allen Street north that those house lots are extremely small. Even smaller than what the Campeaus' are proposing. It's not going to have undue burden on the tax pays. In fact, it's going to create another separate structure, another separate dwelling that is going to enhance the tax pay so it's going to have a positive impact upon the City of New Bedford in times when we need every tax dollar. Atty. Saunders further stated that the communication from the Planning Dept., which was put into the record, was a favorable recommendation. He believes the Planning Dept. noted that this was also consistent with the neighborhood. He also pointed out that the abutting neighbor on John Street is entitled 481 John Street which is the house lot directly adjacent to what is called the vacant lot on John Street. That house lot is almost at the southern most point of the Campeaus' land and in terms of setbacks from the vacant lot and in addition to the legal setbacks that are required, 481 John Street has built into it an even greater setback. There is some separation from the adjoining neighbor and whoever buys 636 Allen Street and the vacant lot knows what they are getting because they are buying those as is. In the rear is the cemetery and I don't think we have any complaints from the people at the cemetery. He asked that the Board vote favorably on the Variance request and at the appropriate time he will be happy to answer any questions. Thank you.

Mr. Comerford asked if anyone had any questions for Attorney Saunders.

No questions were heard.

Jane Gonsalves, 2 Clinton Place, New Bedford, MA stated that she was here to support Mr. and Mrs. Campeau. She has known them for quite a while and does know that they do have a hardship that would be eased by the ability to get the variance. She has not heard from any of the neighbors relative to any opposition to this and she thinks Atty. Saunders commented that the other lots in the neighborhood are of comparable size, and because it would not ruin the character of the neighborhood to subdivide these lots.

Rick Santos, 645 Allen Street, New Bedford, MA stated that he supports this plan. He has known them for about 12 years and he supports the petition.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

Dennis Clairmont, 477 John Street, New Bedford, MA stated that his house is the first house on John Street that was built. It would be alright if the Campeaus' were going to stay there. He stated that they tried doing this two and a half (2 ½) years ago, they had already sold the land, they already had surveyors and everything else. His neighbor and himself and a few others all came and said no because they want to keep the neighborhood the way it is. He further stated that they are not going to have any backyard. It's going to interfere with people from Allen Street because in the winter time the people from Allen Street, park on John Street and when the snow comes there isn't enough parking. They are going to have to take down trees to build a house. He went on to say he would not like to see that house. If they were going to stay there yes, but they are not going to stay there they are going to sell their house and leave and leave the mess to us to look at.

In rebuttal, Atty. Saunders stated that in the plan submitted on the second application the Campeaus' are providing for off street parking. They will be creating new off street parking that doesn't presently exist. He stated that he can understand the last gentlemen's argument before this Board but he wanted to point out that the gentleman's house is the second house. He is not the direct abutter. He is the abutter to the abutter so he would be the second house down. It would actually be three (3) houses down from 636 Allen Street. Atty. Saunders further stated that he did not believe there was going to be an adverse setback. This area of the City is consistent with these type size house lots.

In rebuttal, Mr. Clairmont stated that the people that abut the Campeaus do not speak English. They received a letter but did not know what the letter was. He tried to explain to them to come to the meeting but evidently they didn't come but they don't read or write English.

Mr. Comerford stated that the Board will take it into consideration.

With no further questions or concerns, Mr. Comerford then declared the hearing closed.

Mr. Gomes stated that he is always amazed at how stuff like this happens. If you look at that street almost every lot is the same size. With all due respect, the City Council and their wisdom have changed the square footage requirements for single-family homes. When he came on the Board he believes it was 4,800 square feet which was adequate for a single-family home but for some reason that was not enough for the eleven (11) folks that voted on it and it just went up and up. He thinks its 10,000 square feet. He asked what it is now and Ms. Smith replied 8000. Look at this street and tell me that there is something wrong with this application for a variance. If it was up to him, he would not have had them come in. He would've given them the permit and then say go ahead and build it but that's just him and he recognizes that that would have been illegal. He stated he was talking about being consistent about being fair to people. The petitioner had good intentions when they bought the property and at the time they bought the property it was okay and then the rules changed. The rules change that's what this stuff is like. He understands it. He doesn't like it but understands it and if someone makes a motion to grant the variance he wanted everyone to know that he was going to vote for it because that's the fair thing to do.

Ms. Smith made a motion to grant Appeal #4048 a Variance under provisions of the City Code of New Bedford to George J. Campeau & Diane T. Campeau, 636 Allen Street, New Bedford, MA 02740 and Attorney Christopher T. Saunders 700 Pleasant Street, New Bedford, MA 02740 relative to property located at 636 Allen Street, Assessor's Map Plot 33, Lot 55 in a Residential B District and to allow the petitioner to create a new buildable lot and relieve the petitioners of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2711 (Lot Change), 2720 (Table of Dimensional Requirements), Appendix B/Minimum Lot Size, Rear Yard, 2750 (Yards in Residence Districts) and 2753 Rear Yards and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Gomes.

Roll call vote:

Jennifer Smith – Yes

James Mathes – Yes

Horacio Tavares – Yes

Ian Comerford – Yes

Donald Gomes - Yes

Motion passed.

#### **Appeal # 4049            A Variance**

**Petitioners: George J. Campeau & Diane T. Campeau, 636 Allen Street New Bedford, MA 02740 and Atty. Christopher T. Saunders 700 Pleasant Street New Bedford, Ma 02740** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at John Street, Assessor's Map Plot 33, Lot 54 in a Residential B District. **The petitioners propose to create a new buildable lot with a single family home** which would be in violation of Chapter 9, Comprehensive Zoning Sections, 2700 (Dimensional Regulations), 2710 (General), 2711(Lot Change), 2720 (Table of Dimensional Requirements), **Appendix B/Minimum Lot Size, and Lot Frontage.**

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated November 8, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Representing the petitioners Attorney Christopher Saunders, 700 Pleasant Street, New Bedford, MA 02740 stated that he would not rehash everything that was just presented in the first hearing but pointed out that they are looking for a variance on the frontage and the size of the lot. He requested that the Board respectfully approve the variance.

Jane Gonsalves, 2 Clinton Place, New Bedford, MA stated that she was in favor

Rick Santos, 645 Allen Street, New Bedford, MA stated that he supports the plan.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

No opposition heard.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Ms. Smith made a motion to grant Appeal # 4049 a Variance under provisions of the City Code of New Bedford to George J. Campeau & Diane T. Campeau, 636 Allen Street New Bedford, MA 02740 and Attorney Christopher Saunders, 700 Pleasant Street, New Bedford, MA 02740 relative to property located at John Street, Assessor's Map Plot 33, Lot 54 in a Residential B District and to allow the petitioners to create a new buildable lot with a single family home and relieve the petitioners of Chapter 9, Comprehensive Zoning Sections, 2700 (Dimensional Regulations), 2710 (General), 2711(Lot Change), 2720 (Table of Dimensional Requirements), Appendix B/Minimum Lot Size, and Lot Frontage and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Mathes.

Roll call vote:

Ian Comerford – Yes

Donald Gomes – Yes

James Mathes – Yes

Horacio Tavares – Yes

Jennifer Smith - Yes

Motion passed.

**# 4022      A Finding**

**Petitioner:** **Julio Acosta 134 State Street, New Bedford, MA 02740** who submitted a Petition for a Finding under provisions of Chapter 9, Comprehensive Zoning relative to property located at 134 State Street, Assessor's Map Plot 72 Lot 91 in a Residential B Zoned District. **The petitioner proposes to change a Single Family into a two family** house which would require a Finding under Chapter 9, Comprehensive Zoning Section 2440 (Non-Conforming Single & Two Family Structure), 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B), Minimum Lot Size, Density of Dwelling Units per Lot, Lot Frontage, Lot Coverage by Building, Green Space, 2750 (Yards in Residence Districts) 2751 Front Yard), 2753 (Rear Yard) and 2755 (Side Yard)

Mr. Comerford stated that the petition was already opened and the opening remarks would not be read.

Mr. Gomes asked, for the record, if he was present when the case was open and how much of the case had been heard.

Mr. Comerford stated that he didn't think much of it has been heard.

Mr. Gomes asked other Board members if any part of the case had been heard.

Ms. Smith stated that it had.

Mr. Tavares stated that the petitioner made his case and he explained that he was asked to get some plans.

Ms. Smith stated that the petitioner had come before the Board but did not have detailed plans.

Mr. Tavares stated that everything that would come before them would be new.

Mr. Gomes stated that he did not want to miss anything with the exception of the initial presentation.

Charlie Van Voorhis, principal at Durland Van Voorhis Architects, 628 Pleasant Street, New Bedford, MA 02740 representing Julio Acosta stated that he was coming into this project late and the request before the Board was for granting a Special Permit to convert a legal non-conforming single-family home into a two family home. He stated that the Board had in front of them a couple of drawings and sketches that he put together which was one of the requirements the petitioner was asked to prepare more complete drawings showing the work proposed and the changes that were proposed to be made.

Ms. Smith made a motion to receive and place on file six (6) copies of the plans. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Van Voorhis stated that when his client was before the Board the first time the concerns were that the lot is undersized for the current requirements for a two family home which he believes is 10,000 square feet. He wanted to show what they propose on Site Plan A 1.3. The most important piece of the project is that they are going to provide four (4) off street parking spaces which is what is required through the Zoning Board that meet the 10 by 20 size designation. One of the other concerns the Building Inspector had in the plans first presented was that there wasn't a code compliance for a second means egress from the second floor apartment and the plans show a second means egress from that upper apartment. Those are the two (2) big changes to the plans from the last time it was presented. He also pointed out that in the neighborhood there are 22 multifamily

homes. Of those 22 multifamily homes five (5) of them are actually on smaller size lots than his clients. He further stated that his client went around the neighborhood and developed a petition from about 15 of his neighbors. He requested that the petition be submitted to the Board.

Ms. Smith made a motion to receive and place on file a petition from neighbors in support of the project at 134 State Street. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith asked Mr. Romanowicz to rehash why Mr. Acosta was before the Board.

Mr. Romanowicz stated that Mr. Acosta came before the Board a couple of years ago and the Board denied it. The decision was appealed to the Superior Court and around January of this year they went to Superior Court. The court stated that since it had been two (2) years that Mr. Acosta should go before the Board again.

Mr. Gomes asked if the case was remanded back to the Board.

Mr. Comerford stated that at the same time the case went before the Superior Court the time had expired; the two (2) years.

Mr. Romanowicz stated that the court said it had been two (2) years and the petitioner did not go to trial. The petitioner made an agreement that he would come back in front of the Board and that all he had to do was pay for the advertising and not another appeal.

Mr. Gomes asked Mr. Romanowicz that if a petitioner comes in and gets denied or gets approval and neighbors appeal it, it sits in court for two (2) years and they send it back to the Board because the two (2) years expired.

Mr. Romanowicz stated that it's the judge's decision.

Mr. Comerford stated that the petitioner could have waited the two (2) years and not gone through the court process and been able to come back to the Board.

The petitioner, Julio Acosta, 134 State Street, New Bedford, MA 02740 stated that he wanted to clarify what happened in Superior Court. He said that when the case went before the judge, it was agreed between Mr. Romanowicz, the City Attorney, and himself that instead of the case being decided by a judge that they would work something out between them with some requirements and go back before the Board. The requirements were **adding the parking and showing the second means of egress in new plans** and that he would then be allowed to bring it back before the Board not having to pay the reapplying fee and only pay the advertising fee. It was in the best interest for the City of New Bedford, the City Attorney, the Commissioner, and himself and they all agreed and the judge agreed with their decision.

Ms. Smith asked Mr. Acosta or his architect if either one could go through the plans, because one of the conditions was to come back with a more fully flushed out plan, to show the Board that he has done what was asked of him in the plans.

Mr. Van Voorhis stated that on the Site Plan which was A1.3 there is currently a stockade fence just by the second side door that they are proposing to move back another nine (9) feet or so and in the dotted lines they will see four (4) 10 by 20 parking spaces set off four (4) feet from the property line to the south and that satisfies the parking requirement. In Plan 1.1 and 1.2 there is an existing small stair to the second floor that empties out into the eave and the proposal is to rip that out and put a code compliance stair in the same location and that would satisfy the issue of the second means of egress. Those are the only two (2) changes they are making.

Mr. Comerford asked what the total square footage would be of the new apartment.

Mr. Van Voorhis stated that they were not changing the existing footprint of the house. They will be leaving the setbacks as is.

Mr. Comerford stated that he was curious about the square footage.

Mr. Van Voorhis stated that he did not know and would have to look at the zoning card.

Ms. Smith stated that those were the two (2) main things that the Board needed to see articulated in the plan; the second means of egress and the parking.

**Mr. Romanowicz stated yes; a professional draft a site plan, a plan addressing all the zoning, building issues including but not limited to off street parking, sufficient means of egress, and proposed parkings.**

Mr. Tavares stated that it meant that it was granted with those conditions.

Mr. Gomes stated that it meant that they talked about it and to come before the Board.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

No opposition heard.

Mr. Acosta asked to speak again and stated that he went door to door in his neighborhood and asked all of his neighbors with the exception of one (1) that is sitting on the Board asking them if they would have a problem with him converting a single-family into a two family home and every door that was opened, every person, signed stating they did not have a problem with it. Out of the seventeen (17) neighbors, five (5) are not homeowners they are renters and some of the homeowners do not live in the area. He received ninety percent (90%) of the signatures from his neighbors and they stated they did not have a problem with him converting his home.

Mr. Comerford asked if the signatures were from homeowners and not just residents.

Mr. Acosta stated that most of them are homeowners and the Board could cross check with the abutter's list. The signatures he could not get were from homeowners who do not live in their houses, their properties are rented.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Mr. Comerford stated what concerns him is that they are piggybacks on one another which are not really four (4) parking spaces.

Ms. Smith stated that the petitioner can call it what he wants. It's footage, its linear feet it doesn't matter how he divides it. He can do whatever he wants within the footprint as long as he meets the setbacks.

Mr. Romanowicz stated that that was correct.

Mr. Comerford stated that he thought each spot had to be accessible not back to back.

Mr. Romanowicz stated that there was nothing in zoning to state that.

Mr. Mathes stated that when the entire case began some years ago Mr. Acosta began work without any permits. He asked Mr. Acosta if he worked on his home and had someone living in the home.

Mr. Acosta stated that his brother was living with him. He stated that when he bought the house there was an apartment upstairs already where the previous owner had her son living upstairs and that's where the confusion was. The City of New Bedford had him living there for many years before that.

Mr. Mathes stated that his question was if at the time was Mr. Acosta told that no one was supposed to be living on the second floor because of safety issues; people living in an apartment being able to get out of it in case they needed to and asked if that was accurate.

Mr. Romanowicz stated that it was correct. He further stated that he informed the Housing Court and one of the conditions from Housing Court was for the petitioner to come before the Board. He was denied in front of the Board. It was never a condition from his office to tell him to cease and desist the people that were living there because he had an attorney involved and the City Attorney involved. Once it gets to the City Attorney, it's out of his hands.

Mr. Mathes then stated that he sees someone who is young who bought a home and is doing what he can and that matters to him. He stated that he wasn't doing things the right way until it got stopped and he had to engage the court and the Board again and there are things that have happened with the Board in terms of getting the detailed plans in order to be able to do what we are doing and dealing with this tonight. It's a difficulty for him that the petitioner was not forthcoming in the beginning and that the Board exercised a great deal of patience in trying to help Mr. Acosta submit what was needed to the Board. He is persuaded by what the City Planning Dept. recommends for the Board and their recommendation in particular having to do with the impact on the neighborhood. He came into the hearing, unless he heard or read something significant to change his mind, thinking that it was unlikely that he was going to support the petitioner's proposal. Taking the time to talk to his neighbors, taking the time talking to other people who are parking around him, and getting them to sign the petition was a good move on his part. He liked the fact that he took the initiative but he likes the fact that his neighbors signed the petition more. He went on to say that he was going to support Mr. Acosta's application but he wanted to point out for Mr. Acosta to pay attention to the motion that is made and voted on because he needs to do work specific to what he proposes. He cannot deviate from it he needs to do certain things in a certain period of time and he needs to complete it in a certain period of time and he wants to see him succeed. He doesn't want to see the Board dealing with it again. He believes Mr. Acosta did a good thing by talking to his neighbors and obtaining their signatures. He wants Mr. Acosta to make it work but make it work within the rules.

Ms. Smith made a motion to grant Appeal # 4022 a Finding under provisions of the City Code of New Bedford to Julio Acosta 134 State Street, New Bedford, MA 02740 relative to property located at 134 State Street, Assessor's Map Plot 72, Lot 91 in a Residential B Zoned District and to allow the petitioner to change a single family into a two family house and relieve the petitioners of Chapter 9, Comprehensive Zoning Sections, 2440 (Non-Conforming Single & Two Family Structure), 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B), Minimum Lot Size, Density of Dwelling Units per Lot, Lot Frontage, Lot Coverage by Building, Green Space, 2750 (Yards in Residence Districts) 2751 Front Yard), 2753 (Rear Yard) and 2755 (Side Yard) and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Gomes.

Roll call vote:

Donald Gomes – Yes

Jennifer Smith – Yes

James Mathes – Yes  
Ian Comerford – No  
Horacio Tavares - Yes  
**Motion passed.**

**#4043            A Special Permit**

**Petitioners: Arthur L. Milhench, Trustee, 24 Point Road, Marion MA 02738 and T- Mobile Northeast LLC. 10 Commerce Way Norton, MA 02766 and Heike Milhench 24 Point Road, Marion MA 02738** who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 121 Duchaine Blvd. Assessor's Map Plot 133, Lot 21 in an Industrial C Zoned District. **The petitioners propose to add three (3) remote radio units and one (1) battery unit at grade on the existing concrete pad. The three (3) remote radio units will be mounted on a unistrut along with the existing remote radio units. The battery will be attached to an existing pipe. Which requires a Special Permit** under Chapter 9 Comprehensive Zoning Sections 4900-4951C (Wireless Communications Facilities), and 5300-5330-5360-5390 (Special Permit).

Ms. Smith stated that there was a communication with a request and she would like to read it into the record.

Ms. Smith began by stating that the communication looked like an e-mail from a Michelle Dionne at T-Mobile sent today at 2:29 p.m. to Raymond Khalife T-Mobile Zoning Hearing 121 Duchaine Blvd., New Bedford, T-Mobile Site No. 4FR7431C. Mr. Khalife per our phone conversation earlier today this communication is to let the New Bedford Zoning Board know that T-Mobile is unable to attend the Zoning Board hearing scheduled for tonight, December 1, 2011. We ask for a continuance and a new meeting time. You can reply to me at this e-mail address. To confirm the new meeting time estimated to be January 5, 2012. Thank you for your time in this matter. Sincerely, Michelle Dionne, Real Estate Manager, T-Mobile, 15 Commerce Way, Suite B, Norton, MA 02766 508-286-2717.

Mr. Gomes motioned to continue case #4043 to January 5, 2012. Motion seconded by Ms. Smith. With all in favor, the motion carried.

**# 4044            A Variance**

**Petitioners: Carlos F. and Maria J. Oliveira 215 Query Street New Bedford, MA 02745 and Tiago Oliveira 215 Query Street New Bedford, MA 02745** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 215 Query Street Assessor's Map Plot 110 Lot 72 in a Residential B Zoned District. **The petitioners propose to complete the driveway by applying for a curb cut which will require a variance under** Chapter 9 Comprehensive Zoning Section 2756 (Special Driveway Side Yard Requirements).

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated October 7, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Tiago Oliveira, 215 Query Street, New Bedford, MA on behalf of his parents who are not fluent in English. He stated that they are trying to get the curb cut so they can have a driveway. His father is disabled and has a bad back and in the winter it is really tough. If there is a parking ban sometimes they cannot park next to our house and have to park far away clearing the snow itself and then someone else would take the parking spot and then clear another parking spot. He himself tries to help as much as he can. His mother is also ill. Three (3) vehicles would actually come off the street. It's a very dense street. Previously, they were able to park at the Lincoln School parking lot but now that they built the new school we are not sure if we can still do that in the winter. We are trying to get the driveway open to make it easier on their lives. My father is 56 and my mother is 50 and as stated before my father has a bad back and this would alleviate it for them.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

No opposition heard.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Ms. Smith stated that in the packet there was a blown up version which has a note which she cannot read.

Mr. Comerford read the note stating that the neighbors have given the petitioner authorization.

Ms. Smith asked if it was 211 Query Street.

Mr. Oliveira asked to speak and stated that it was 211 Query Street which is adjacent to his parents' home. Mr. Leite is the property owner and he lives in North Carolina. We have a notarized letter from Mr. Leite approving this and letting us use his two (2) three (3) feet of property between my parents' house and his house to be able to use it as a driveway.

Ms. Smith asked about easements because they will be encroaching on the neighbor's property.

Mr. Khalife stated that they are not encroaching. To his knowledge they have the permission to build the driveway up to the neighbor's property line, only what should have been almost one (1) foot of green space or landscaping material.

Mr. Mathes made a motion to grant Appeal # 4044 a Variance under provisions of the City Code of New Bedford to Carlos F. and Maria J. Oliveira and Tiago Oliveira relative to property located at 215 Query Street, Assessor's Map Plot 110, Lot 72 in a Residential B Zoned District and to allow the petitioner to complete the driveway and obtain a curb cut and relieve the petitioners of Chapter 9, Comprehensive Zoning Section, 2765 (Special Driveway Side Yard Requirements) and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Gomes.  
Roll call vote:

Ian Comerford – Yes  
Donald Gomes – Yes  
James Mathes – Yes  
Horacio Tavares – Yes  
Jennifer Smith - Yes  
Motion passed.

**#4045            A Special Permit**

**Petitioners: Stanislawa Sawicki 391 Alden Road Apt. 111 Fairhaven, MA 02719 and Walter Sawicki, Trustee, 19 Grayoaks Drive. East. Freetown, MA 02717** who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 406 Dawson Street, Assessor's Map Plot 118, Lot 405-407 in a Residential B Zoned District. **The petitioner proposes to create a second driveway which will require a Special Permit** under Chapter 9 Comprehensive Zoning Sections 3149 (Vehicular access to a building lot accessed from public way that does not constitute frontage of the lot)

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated October 7, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Mr. Walter Sawicki, 19 Grayoaks Drive, East Freetown, MA 02717 stated that he was present on behalf of his mother, Stanislawa Sawicki, English translation as Stella. Stella has been living in an assisted living facility in Fairhaven and she is 93 years of age. His daughter and son in law are the current residents at 406 Dawson Street which was constructed by his mother and father in 1950. There are three (3) lots with this project and he presented additional Google Earth Maps. There is one (1) hand drawn and two (2) Google Maps.

Ms. Smith made a motion to receive and place on file the material including the Google Maps. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Sawicki referred to the hand drawn map which shows the neighborhood in general. The lots that are affected and the proposed driveway is lot # 2. It faces Harwich Street not Dawson Street. He asked the Board to refer to Google Map #1 to see where Tisbury and Dawson Street intersect. The driveway to 406 Dawson Street is continuous onto Tisbury Street. He recalls as a child vehicles actually driving up the driveway not realizing the road did not continue. He informed the Board that all the residences in the neighborhood are single-family dwellings. There will be more than sufficient on street parking even though a curb cut would be

made on Harwich Street to add a driveway. It's not unusual for dwellings in this neighborhood to have two driveways. He asked the Board to look at the map across the street, which would be the northeast corner of Tisbury, and Dawson Streets. There is a residence there that has a driveway both on Tisbury Street and on Dawson Street. He asked the Board to look at Google Map #2 which shows the back of the lot on Harwich Street where the proposed driveway would be placed. There are no driveways or impediments opposite, where the curb cut would be made. There would be no back-to-back driveways which could create a problem with backing from one while someone else was backing from another. He suggested that as a result of the location of the dwelling, Normandin Middle School is located right at the end of that particular section of Dawson Street. Dawson Street is an unusual street. It is cut in three (3) different sections with separations in between. There is a tremendous volume of traffic that traverses Dawson Street both in the morning and in the afternoon when school is going into session and when school is leaving session as well as school busses that use Dawson Street. He stated that on street parking on Dawson Street assists in inhibiting traffic flow back and forth from the school. He also suggested that the turning radius going from Tisbury Street onto Dawson Street, if you're making a right hand turn to go west onto Dawson Street, can be inhibited by on street parking in front of my mother's address because of the way the driveway is cut. To one side of Tisbury Street vehicles parking on the street are sort of in the intersection and his daughter has witnessed fire apparatus driving down Tisbury Street and be unable to make a right hand turn onto Dawson Street because of parked vehicles forcing them to turn left and go down and around. Another issue is the snow removal issue. Because of the intersection when Tisbury Street is plowed the vast majority of that snow ends up in front of my mother's house. He remembers having to shovel it several times when the snow plows went by. His son-in law now gets to do that. The reason they are proposing a second driveway is because his son-in law owns a utility trailer which is approximately fourteen (14) feet long which he uses in conjunction with his employment. There really is no place to park it other than on the street in front of the house. A second driveway on the lot which fronts Harwich Street would allow him to back that trailer in and off the street and he believes that would be in the interest of public safety because of the fact that it's fourteen (14) feet long and about six (6) feet wide and it will not inhibit snow removal on Dawson Street if it was parked off the street on the Harwich Street side.

Ms. Smith asked if they had dimension for the proposal

Mr. Sawicki said that he did and that it should be in the plan submitted. It should be at the end of the packet. He stated that they are proposing a driveway which goes into the property fifteen (15) feet by sixteen (16) feet wide.

Mr. Comerford asked how far is the end of the driveway from the house on a particular map Mr. Sawicki submitted.

Mr. Sawicki stated that it is 160 feet from street to street so its 80 feet. 30 to the lot line and he believes another 25 feet and stated that it would be about 55 feet total.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

No opposition heard.

Ms. Smith asked Mr. Sawicki if he spoke to the abutters of the proposed driveway; Gregory Caren at 118 Somerset Street and Elsie DeCotis at 401 Harwich Street.

Mr. Sawicki stated that he did not speak with them.

Ms. Smith stated that there were not present and they were notified.

Mr. Sawicki stated Mrs. DeCotis is around 89 years old.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Ms. Smith made a motion to grant Appeal # 4045 a Special Permit under provisions of the City Code of New Bedford to Stanislaw Sawicki 391 Alden Road, Apt. 111, Fairhaven, MA 02719 and Walter Sawicki, Trustee, 19 Grayoaks Drive, East Freetown, MA 02717 relative to property located at 406 Dawson Street, Assessor's Map Plot 118, Lot 405-407 in a Residential B Zoned District and to allow the petitioners to create a second driveway and relieve the petitioners of Chapter 9, Comprehensive Zoning Section 3149 (Vehicular access to a building lot accessed from public way that does not constitute frontage of the lot) and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Mathes.

Roll call vote:

Jennifer Smith – Yes

Ian Comerford – Yes

Donald Gomes – Yes

James Mathes – Yes

Horacio Tavares - Yes

Motion passed.

**#4046            A Special Permit**

**Petitioners: Michael Lajoie P.O.Box 50453 New Bedford, MA and Jeremy Gaudreau 49 Green Street Fairhaven MA 02719** who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 1881(A) Acushnet Avenue Assessor's Map Plot 110 Lot 242 in a Mixed-Use-Business Zoned District. **The petitioners propose to open a tattoo studio which will require a Special Permit** under Chapter 9 Comprehensive Zoning Sections 4200- 4267 (Body Art), and 5300-5330, 5360-5390 (Special Permit).

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated October 7, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Jeremy Gaudreau, 49 Green Street, Fairhaven MA stated that he started the project back in June shortly after he gained full and legal custody of his two (2) small daughters. He was a deputy with the Massachusetts Environmental Police in the Natural Resource Division but due to an injury he did not pass the physical compliance. He started this project so he can make his own schedule and be there for his children and he asked the Board to grant the permit because he needs to take care of his children. He stated that at present he has 234 appointments guaranteed waiting from 17 different countries. 74 of them are Marines coming back from Iraq and Afghanistan and they get tattooed free of charge. All of those appointments at \$100.00 comes out to \$70,200.00 that is sitting on the table. He stated that in the packets in front of the Board that he has been granted by the Board of Health an establishment and his practitioner's license. He stated that he has done everything that the Board of Health required and more. He was once asked why he didn't go and work at another shop. He said that no shop in the area is willing to give him a job because he believes changes need to be made in the industry. He is backed by the Board of Health from this City 100%. One of the changes is that it should be a requirement of regular drug screenings given to every artist and the quality of work should be a deciding factor. There are also 37 artists operating illegally in New Bedford out of their homes. They have websites, addresses, and hours of operation. He wants to put a stop to that because there are a lot of bad things going on. He also stated that he will be doing charity work, charge \$30.00 for a tattoo and at the end of the month donate all of the money to a children's charity in the City. Police, Military, Fire Department, EMT's and students will receive 25% off. It's a small space its 400 square feet. He has passed the plumbing inspection and has done very little work and is just waiting for an approval and stated that the Board of Health is willing to go to the property as soon as possible so he can get the project going.

Ms. Smith asked Mr. Gaudreau about the parking requirement issue and then solution. She further stated that she saw something in Mr. Khalife's transmittal.

Mr. Khalife stated that Mr. Gaudreau had mentioned to him that the landlord granted him permission to use the parking in the back of the building.

Mr. Gaudreau stated that he originally had an address issue which Mr. Romanowicz helped resolve. 7 Clifford Street was the original address. It is two (2) buildings on one (1) piece of property. There is parking for four (4) he believes. He called the landlord who stated that none of the tenants use the driveway and if you need to use it feel free.

Mr. Comerford asked Mr. Gaudreau who owns the building.

Mr. Gaudreau stated Michael P. Lajoie.

Mr. Comerford asked if Mr. Lajoie was present.

Mr. Gaudreau stated that he was not. He further stated that Mr. Lajoie called him earlier today and asked him to advise him of what happens at the meeting. Mr. Gaudreau stated that the space is small and if he gets the okay, the Board of Health will go in and he can turn on the open sign and be ready to go. He stated that he is the only employee there and it is costing him money to keep it going as he is paying liability insurance, gas bill, electric bill. This morning his voicemail was full with people inquiring. He also receives between ten (10) and sixteen (16) e-mails a day asking him when he will open. He said that this is what he does for a living and he will be able to make his own schedule.

Ms. Smith stated that she knows that there is one (1) tattoo establishment in the City and that was a different thing because that location had already been granted a Special Permit, later on a new artist moved into that business. This would be the first one in this building.

Mr. Gomes stated that he was looking at the Special Regulations of Body Art and it doesn't say anything about signage. He asked Mr. Romanowicz if there were any special requirements about signage.

Mr. Romanowicz stated that they would have to apply for a sign permit if it is going to be a ground sign.

Mr. Gaudreau stated that there is an existing sign above the door.

Mr. Romanowicz stated that if there is a sign over the door they would have to get an indemnity from the City and we would just approve it.

Mr. Gomes stated that it doesn't state anything about neon or plastic signs.

Mr. Gaudreau stated that he has drawing of the sign and that a friend of his will print the sign. No neon signs, no flashing open tattoo signs. He wants to keep it as simple as possible.

Mr. Gomes stated that he wanted it to be on the record that the question about signage was asked.

Ms. Smith stated that she wanted to commend Mr. Geaudreau for going through the proper channels and she appreciated the comments about the establishments that are operating illegally in the City.

Mr. Gaudreau stated that he wants to change a lot in the industry and the Board of Health wants to work with him and they cannot do anything and he cannot do anything. He has been "blackballed" by most of the shops in the area because they don't want to see things changed. He does.

Ms. Smith stated that she knows it's more work to do it this way but it's the right thing to do.

Mr. Gaudreau stated that his children have been his biggest supporters and biggest helpers throughout the entire project.

Sara Arnold, 297 County Street, Apt. 2A, New Bedford, MA 02740 stated that she is a friend of the family and that she has a couple of facts regarding the issue. She stated that a 2006 study done by the Journal of American Dermatology informs that Americans between the ages of 18 and 50 are tattooed which is almost one (1) in four (4). A lot of people view tattooing as a legitimate art form including the LOC Fourth Street Art Museum in New York City along with the Hallwalls Contemporary Arts Center in Buffalo. She believes it's really important to state that today the City was ranked the 7<sup>th</sup> most artistic city of the country. She further stated that she supports the petition.

No further favorable testimony heard.

Mr. Comerford asked if there was any opposition.

Steve Martins, Ward II City Councilor, 273 Shaw Street, New Bedford, MA 02745 stated that he wanted to be on the record that he started out opposed and is now more on the favor side than the opposed but he wanted to add that Ray Khalife sent him the abutter's list and he usually cross checks with his list of constituents and businesses in the area who might have any concerns in regard to any businesses that are located in Ward II. In this particular case he did not receive any calls or e-mails from people that he contacted. He stated that as the Board knows he is extremely protective of Ward II and he usually likes developers to contact him in regards to opening facilities such as this one. He had some questions to ask through the Board to the petitioner; hours of operation, what is the tattoo shop named, and days of operations so he can relay it to his constituents and business owners who are located in the area. He just wanted to make sure that in the future if he is contacted by the individuals that he represents that he has the answers.

Mr. Comerford stated that by the City Regulations, tattoo shops cannot be opened between the hours of 10:00 p.m. and 10:00 a.m.

City Councilor Martins asked what the petitioner's hours of operation would be.

Mr. Gaudreau stated that he would be opened Tuesday through Saturday from around 11:00 a.m. to 9:00-10:00 p.m. He said that if he didn't have anything to do, he would close.

Councilor Martins asked; what would the name of the business be.

Mr. Gaudreau stated Living Canvass.

Councilor Martins stated that he had conversations with the current Councilor and that she will say a few words and she will most likely have a stronger opinion than he does and Ken Rezendes who is present from the Bullard Street Neighborhood Association. The issue was brought up to the Neighborhood Association a few weeks ago. He was a little hesitant at first. It's located next to a library, next to a park where, within the past year or so, they have worked really hard to secure hundreds of thousands of dollars to do renovations at Brooklawn Park. He is extremely protective about that but stated that its comforting to know that Mr. Gaudreau is willing to work with Councilors and the Board and members who work for the City in case an issue does come up he can or the Board can contact him regarding any issues in the area. He wanted to express his initial concerns from the beginning where he wrote a letter stating that he wanted to make sure he was present and that he couldn't attend the first meeting. The proposed Tattoo Shop is within a walking distance from the library and the park and it's also within half a mile from Lincoln School, Normandin Middle School, and kids coming from the park and going to school certainly go back and forth in that area. He further stated that he has nothing against tattoo parlor shops. He does not have a tattoo but he wishes Mr. Gaudreau the best of luck.

Ken Rezendes, 125 Holly Street, New Bedford, MA 02746, President of the Bullard Street Neighborhood Association stated that the concerns he has is that Red Jay's Lounge is about half a block up the street and having intoxicated people going to the business and how Mr. Gaudreau would deal with them whenever they come day or night. Like Councilor Martins stated, the City spent thousands of dollars in the Brooklawn Park area making it more family friendly, Wilks Library is half a block away, St. Joseph's St. Teresa's Church is just down the street with children going to school there, Normandin Middle School. Those are his main concerns. He further stated that there are some people who are still offended by tattoos, people do not want to show up, there are some people who get nervous walking by a tattoo shop. Again he stated those are some of my concerns. I'm mainly worried about Red Jay's and how people get affected just walking by a place like that even though Mr. Gaudreau has children.

Mr. Gomes asked if Red Jay's was still open.

Mr. Rezendes stated unfortunately and stated there is after hours partying, fights etc. He referred to Mr. Gaudreau and said; what would he do if he is alone at night and someone went in.

Mr. Gomes stated that the ordinance allows tattoos parlors set hours of operation. They cannot operate between 10 and 10.

Mr. Rezendes stated that Red Jay's is open Saturday afternoons and a bar is a bar.

Ms. Smith asked Councilor Martins for clarification what side did he speak on.

Councilor Martins stated in favor because he has not received any calls or e-mails in opposition. He stated that he would not be a good councilor if he spoke in opposition. He's in favor with the opinion that he stated.

Debra Coelho, City Councilor At-Large for New Bedford, 61 Nye Street, New Bedford, MA 02746 stated that she is clearly in opposition. She stated that many years ago tattoo establishments were allowed in the City of New Bedford and they were allowed under industrial zoning only and that was working just fine until 2006 when the Council decided they were going to open it up to mix-use and it was quite a fight. She was the lone dissenting vote against it. It doesn't make her wrong it makes her against it and she would explain why. She stated she wanted to tell Mr. Gaudreau that she can understand his excitement for the new business. She has been a small business owner for 20 years and she did go by the building to look at it. She knows Mr. Gaudreau is excited because there is a sign saying coming soon Tattoo Canvass and she understands the excitement for a small business. She encourages small businesses in New Bedford. She is not an anti tattoo person or business. She was not there for that. She is there for the ordinance which allows the Zoning Board to act on. She had two (2) concerns, clearly the hours that he cannot open between 10:00 p.m. and 10:00 a.m. She read, to issue special permits in accordance with Section 4200 and so on the Board shall have the authority to impose any reasonable conditions for maintaining and insuring the health, safety, and welfare of the general public and that's what she is there for, to represent that. There are two (2) issues that she wanted to bring up; one of them was the location and the other one was the parking issue. The location, 1880(A) Acushnet Avenue, is really close by to the Wilks Branch Library which is 1911 Acushnet Avenue and she stated that she didn't know what the footage of distance was. She read that the separation distance is 200' from any property that is to be used as a school, child care, or church. Wilks Branch Library has several things happening which involve children. From 3:30 to 4:30 they have story hour and crafts from 4:30 to 5:30 they have tutors for Practice Reading and reading out loud therapy. They also have writing groups. From 6:00 to 8:00 p.m. they have the Girl Scout's that meet and from 4:45 to 6:00 p.m. the Daisy Troops that meet there. The establishment also wants to open up next to Brooklawn Park on Acushnet Avenue; it's next to Baby Boudeau, the Brooklawn Chase Funeral Home which conducts services there. It's next to a natural supplement health store. There are also so many apartments visible to the business and China Inn and a lot of apartments everywhere where they will be able to see the establishment clearly through their windows and there are housing apartments to the left of the business. She wanted to know if there were any proper measurements taken from that location and she also questioned the parking. She read under the 4241 Ordinance and said that parking shall be provided in the side or rear yard area only. She stated that she did not see that when she was there earlier. She understands that Mr. Gaudreau cares about families. She also cares about families and she really cares about the children at the library. She cares about the children living in that community that is always trying to keep itself and as we know it's a struggle a continuous struggle. She worries about all of those families. She worries about the church that is nearby. She worries about the safety of the community. She worries about the reputation of the neighborhood that tries so hard. She is very pro business. She especially promotes small businesses to investors in the City of New Bedford. However, she is very supportive of neighborhoods and families and all the people that could not be there because under the ordinance they do not get letters to their house so the abutters are not all made aware of the situation. She is there representing all of those that are not aware of it, all the people for one reason or another whether it's education or reading or language that could not be present because they do not have an understanding of what was going on so she is there representing all of them and she hopes the Board takes that into consideration. And she would like the footage properly measured and would also like pictures that show the parking on the side and rear yard area because that is what the ordinance calls for.

Mr. Comerford stated that he did have from the City Planning Dept. that the site had been checked for compliance and eligibility with Ordinance 4200 through 4267 most notably the 200' separation distance from any property being used as a school as well as the 1,000' separation distance from any other body art establishment.

Councilor Coelho asked if that included the library.

Mr. Gomes stated that a library is not a school.

Councilor Coelho stated that she knows it is not a school but that's what she is questioning because of the amount of activities they have. She further stated that maybe they should have included that in the Ordinance. She was questioning that too because of the amount of activities that goes on with children. It talks about the welfare of the general public. Children just aren't found in the schools, they are found in the library with just as many going in the parks.

Mr. Gomes stated that he did not disagree with her that kids are not just found in schools but technically the library is not a school. He said that he has a problem with interpretations sometimes and the Councilmen wrote it up and defined it and said we are going to give the authority to the Zoning Board of Appeals to grant special permits to tattoo parlors if the tattoo parlors meet certain conditions. One of those conditions is that they be 200' from a school. He stated that he looks at the regulations and says they didn't include the library, they should have but they didn't. It's not a school. It's a library and the problem for him is the whole issue of interpretation because libraries and schools go hand in hand but that's not what the regulations say and it's a problem for some of us in terms of making a decision.

Mr. Comerford stated that he agreed with Mr. Gomes that there is a gray area there and he understands that Boy Scouts meet there and children go to libraries and adults go to libraries too and he thinks that it is something that needs to be defined more. He stated do you make it all public buildings, does City Hall get wrapped into that, Police Depts. As it stands, it's not next to a school. He does see her concern with that but at the same time it's not clearly outlined in the ordinance.

Councilor Coelho stated that in 4212 the Zoning Board has authority to issue special permits in accordance with Sections 4200 to 4267 and shall have the authority to impose any reasonable conditions for maintaining and insuring the health, safety, and welfare of the general public. She questions the welfare of the general public. The Zoning Board has the authority to interpret that.

Ms. Smith respectfully asked what conditions. She cannot see that they can come up with any conditions.

Mr. Comerford stated that Councilor Coelho is more than free to offer the Board examples of conditions that she thinks make it better. He asked Councilor Coelho if she was completely opposed to the tattoo shop being there in general.

Councilor Coelho stated that she was and that the parking is not really met. She read 4241 that parking shall be provided in the side or rear yard only.

Mr. Comerford stated that he did not have 4241.

Ms. Smith stated that she did not have it either.

Councilor Coelho stated that that's what it was. It's stated under 4240 and 4241 parking shall be provided in the side or rear yard area only.

Mr. Comerford asked to see the Ordinance because he did not have it.

Mr. Romanowicz gave Ms. Smith a copy of the Ordinances. Ms. Smith stated that that was what they had and there was nothing in there about the parking. Ms. Smith stated that that was exactly what the Board has but not what Councilor Coelho has.

Mr. Romanowicz stated that he thought that what Councilor Coelho has was old; that they took it out.

Ms. Smith stated that what the Board has supercedes what Councilor Coelho has.

Mr. Gomes stated that even if you say that 4241 applies, the fact of the matter is if you're going to grant the special permit you're going to relieve him of that responsibility he would think. The Zoning Board has the authority and power to relieve him of that responsibility. This is why people come to us because the ordinance states that they cannot do something and this Board says yes you can. We are going to relieve you of that responsibility. That's what the Zoning Board of Appeal is about.

Ms. Smith stated that she understands but she didn't want to make a decision if the ordinance had language in it that she didn't have.

Mr. Comerford asked if Councilor Coelho had anything else to add or if anyone else had questions for the Councilor.

Councilor Coelho stated that she believes she covered it all and will leave it with the welfare of the general public which is who she is representing. She leaves it up to the Board to make the decision. She believes she presented the case and believes she presented it well and she does have a concern for the hundreds if not thousands of children living in the neighborhood.

In rebuttal, Mr. Gaudreau stated that he understands their concerns. All the money that has been spent on the City and parks. His great great grandfather, was a heavily tattooed man. He has a building in downtown named after him and two streets in the City. William Tallman. My great great uncle owned 118 whaling boats in the City in the early 1800s. He stated that he didn't finish high school but spent more time in college classes than most people who are in college. As far as the concerns with the bar and people coming in, he was a deputy with the DPA. With all the training that he had, he had more arrests and more fines than any other officer in his Department. If anyone walks into his shop intoxicated, he would be able to tell within minutes and he will guarantee refusal. The concerns about the kids, he has a six (6) year old daughter who is in the Daisy Troop and a nine (9) year old who is in Girl Scouts and he volunteers every week. Just a few days ago he had twelve (12) nine (9) year old girls running around his house by himself. He asked if he could show something to the Board.

Mr. Comerford asked what it pertained to.

Mr. Gaudreau stated he was showing his work and said that the quality of work should be a deciding factor with the Board of Health and he wanted to show a particular picture.

Mr. Comerford stated that he didn't believe it was pertinent to the Board's decision making process and asked the other Board members if they wanted to see it.

Mr. Mathes stated that he did not need to see it and told Mr. Gaudreau that he appreciated his willingness to show it to the Board.

Mr. Tavares asked how many customers he thought he would have at the establishment at a time.

Mr. Gaudreau stated that he will be the only one working there and he works by appointment only so one (1) customer at a time. It's not how it used to be 30, 40, 50 years ago when someone would walk into a tattoo studio, pick something off the wall, and get it done. It's a lot more personal nowadays. People get portraits of their children, loved ones, things that are meaningful. He stated that he will sit down with customers for hours ahead of time deciding. They don't get any work done until they are 100% happy with what they got. They leave a deposit and then they come to their appointment. He can only cater to one (1) person at a time. He does not take walk-ins and there are a few pieces of work that he will not do. He would rather send them somewhere else, the random silly things that people get tattooed.

Mr. Gomes stated that Mr. Gaudreau wasn't planning on hiring anyone.

Mr. Gaudreau stated no. He has learned from the past working in shops that you are better off working alone.

Mr. Gomes stated that he wanted it to be on the record.

Mr. Gaudreau stated that if the Board looked at his plans for the inside they would see only one (1) room.

In rebuttal, Councilor Coelho stated that she was speaking with her colleague that she believes it is important that the abutters be notified. She will be going through the Council to make sure that it gets added on to the ordinance. She further stated that she is really saddened because all of the businesses and all the people living there were not notified of this happening. In some of the cases presented tonight, they had letters from the abutters stating that they were in agreement with the work being done and there was approval from the neighbors. In this particular case there's no knowledge, there's no approval, there's nothing from the neighbors. The neighbors do not have a voice and that really concerns her and she is the only one present other than Mr. Rezendes who are really trying to portray the voices of the neighborhoods. It's always such a lonely voice it doesn't make us wrong but it's a lonely voice. She stated that she has been going at it for over 20 years now and New Bedford is a better place for small voices but she will be working through the Council channels to make sure that from now on the abutters are notified. She is really saddened that they weren't.

Mr. Gomes stated that they might include in the ordinance that businesses and tenants get notified but that is another issue but there is an abutter's list that people were notified and he knows what she is saying about other businesses who don't own the building but are tenants. He doesn't disagree with what she is saying but it's a whole other story. There is an abutter's list.

Councilor Coelho stated that the other thing she wanted to question is about how sometimes these places just open up for the body art and then some other form of sales pick up. She went by the other business on Kempton Street, the only other tattoo shop.

Mr. Comerford stated that it was Flying Aces on Kempton Street.

Councilor Coelho stated that they are selling videos in there. She doesn't know what kind of videos, but that's her other concern. If its just going to be body art then we can just expect body art but she doesn't want to see a business coming and say they are going to do body art and then six (6) months from now that they are selling other things. It's always frightening with the neighborhood. You never know what to expect. And she also questions that Mr. Gaudreau is from Fairhaven. She also questions why doesn't he open up in Fairhaven. Why do we always lower our standards in New Bedford. She will not do that. She will not lower the standards for New Bedford and she may be the lone voice but she will never lower the standards for New Bedford. She further stated that it pains her that we don't really have the voice of the neighborhoods here tonight. Again she leaves it to the Board to decide.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Mr. Mathes stated that he wasn't born in New Bedford but has lived here for a long time. New Bedford is a seafaring community. There are people walking up and down Union Street with tattoos on them and reflected by the fact that there even is a special regulation that applies to it tells him that it is a legitimate industry. It's also an art in a community that for at least the past ten (10) years has had significantly increased focus on art. There's a university downtown dedicated to art. Then he sits there and looks at the industry, in any industry whether it be body art, tattoos, or grocery store, in his background and working with the business community, he always hopes that we get the best possible people in New Bedford for the ways these businesses should be run to be the ones who came in. He has not done a background check on the petitioner but he has listened to him tonight and he feels very good about him. He thinks that this would be precisely the kind of individual we would want for a legitimate industry that is an art in a city that has a heritage to a certain degree of people who

live here and who have made their way here in life getting tattoos. He also has had extensive involvement with youth and with at risk youth. He stated that he spends a lot of time with a young man who is eighteen (18) years old who recently got a tattoo. He didn't tell him to get it or not to get it. He just asked him lots of questions about why he wanted to get one. We had conversations about it. And the last time he saw him he showed him his tattoo because he recently turned eighteen (18) and at that point he knew he could do it on his own. He is not related to him. When he asked him if he had it done at a licensed shop, this is not in the City of New Bedford, he said no. He mentioned to him that he was really concerned about infection and what that can end up doing to him. With respect to this young man who I know, who is a good kid, who has a pretty tough road in front of him who has had a tough road so far his first eighteen (18) years, if he was going to make that decision as a young adult when he could do it, he went by himself, I prefer he go and see a Jeremy and that's why I think our City and the City Council included set this out. They said if your going to do it we need people to do it a certain way. He further stated that he is very sensitive to how people feel about it but he also has to believe that if the people who live near there or who have business near there will open their minds and then listen to what it is that Jeremy is doing and putting into context of it being a legitimate business a legitimate industry. They may be nervous about it now but he wouldn't mind if he set this thing up right next to his house. It wouldn't bother him at all. It might with some people who come forward to make a presentation who might not feel the same way. I feel good about this plus he has come in compliance with what the City requires of him in our planning issues.

Mr. Gomes stated that the City Council did a pretty good job of fanning this thing on the Zoning Board of Appeal. Whether that was a good thing or bad thing, he's not sure. He thinks it's a good thing because then it took it out of their hands and maybe that is a good thing and out of the realm of politics, and put it into this body. In doing that, they said the Zoning Board of Appeal is authorized to do this but they better make sure that certain things are done and laid out. There are some omissions. Obviously we find one today in terms of the library and that whole issue of education and schools in terminology. That can be corrected by the City Councilors. He stated that he was not going to tell them how to do their job although they tell us how to do our job. That's okay because sometimes, they hire us but that's a whole other issue. When he was reading the ordinance he said boy they did a decent job in laying out what the Board of Appeals needs to look at and this young man has complied with everything the Council said that he needs to do in 4200 and he's with Jim and he's going to vote for it. And he just wanted to toss it out that he sounds like a very responsible individual, young man, and he wants to do the right thing and that carries a lot of weight with him because he's old.

Mr. Comerford stated with regards with how 4200 was drafted, if you start taking in libraries, then you'll be taking in certain community centers and before you know it you are in Fairhaven. He would like to see a condition that there be no outside seating at the establishment. Like no little card tables out there, smoking spots. He doesn't want to see it as a hang out spot which is what people might consider to be something that could detract from the neighborhood. It doesn't have to be made. He was just putting it out there. It's something that he feels would, kind of keep peace with the neighbors.

Ms. Mathes made a motion to grant Appeal # 4046 a Special Permit under provisions of the City Code of New Bedford to Michael Lajoie P.O.Box 50453 New Bedford, MA and Jeremy Gaudreau 49 Green Street Fairhaven MA 02719 relative to property located at 1881(A) Acushnet Avenue Assessor's Map Plot 110 Lot 242 in a Mixed-Use-Business Zoned District and to allow the petitioners to open a tattoo studio and relieve the petitioners of Chapter 9, Comprehensive Zoning Sections, 4200- 4267 (Body Art), and 5300-5330, 5360-5390 (Special Permit) with the following condition that there be no outside seating in front of the establishment and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Gomes.

Roll call vote:

James Mathes – Yes

Ian Comerford – Yes

Donald Gomes – Yes  
Jennifer Smith – Yes  
Horacio Tavares - Yes  
Motion passed.

Ward II Councilor, Steve Martins asked if he could discuss with the Board regarding City Council.

Mr. Comerford stated that he could.

Councilor Martins stated that he heard some feedback regarding the City Ordinances that they have in the books. If this body ever runs into an issue, and sometimes they are scratching their head why they have the ordinances the way they are, please feel free to send him recommendations to the City Council and then he will refer it to their Ordinance Committee so they can revisit and look at. He stated that they have ordinances in the books that have not been updated in decades and they would be more than happy to revisit any ordinance that the Board may think needs to be updated.

Mr. Comerford stated that would be great.

**#4047            A Special Permit**

**Petitioners:    W. Trading, INC. 1-5 Cape Street New Bedford, MA 02740 and Marc R. Deshaies, Esq. Ellyn H. Hurd, Esq. Perry, Hicks & Deshaies, LLP, 388 County Street New Bedford, MA 02740** who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 1- 5 Cape Street Assessor's Map Plot 42, Lot 260 in a Waterfront Industrial Zoned District. **The petitioners propose to demolish existing prior non-conforming structure with a gross square footage of 9,821 and three stories, and reconstruct a new commercial structure with a gross square footage of 6,325 square feet within existing footprint which will require a Special Permit** under Chapter 9 Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures), 2410 (Applicability), and 2430-2432(Non-Conforming Structures Other Than Single and Two Family Structures).

Ms. Smith read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated October 7, 2011. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Ms. Smith read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the plan be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Ms. Smith motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Mathes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Mr. Khalife stated that he would like to submit to the Board some revised plans which have been received by Attorney Deshaies which he has not sent to the Board. These would be the revised plans for this application.

Ms. Smith made a motion to receive and place on file the revised plans. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford asked Attorney Marc Deshaies with the revised plans are there major differences that they should start with.

Attorney Marc Deshaies representing the petitioner stated that there was an issue raised with respect to the original plan that was submitted. Mr. Weckesser of W. Trading is contracting the size of the building from 9,600 square feet to 6,300 square feet and there was a question of whether in fact what they defined as mezzanine storage constituted a story thus invoking a provision on the appendix where they would have to have a twenty (20) foot rear setback. That issue was raised. It was always intended to be storage not have it occupied by anyone working on the property. Under the City Code they define a story to be an area as more than one-third (1/3) of the gross square footage. In this case it would have been 6,500 square feet. This area is open. Our revised plans, which were submitted to the Board on November 17<sup>th</sup>, along with a memorandum basically, contracts the area of this level 3. The first ground floor level has a welding shop, a storefront, and all the offices with the business. The second floor has storage and open space and a machine shop. First floor is the 6,325 square feet, the second floor, because of the open area is 3,190 square feet for the machine shop and the storage thus going over one-third (1/3) of this amount. This was always intended to be storage it is mezzanine storage and as you can see (pointing to a diagram) there is a limited height on the building so what they have done is they have made the area open above on the third level; a level where we will have storage. This will be open right here and we will have storage here and by contracting it from what was 3,100 we are losing about 1,000 square feet of what we were planning on storage. It is less than one-third (1/3) of the requirement for a story. Thus not being a story we do not fall into the situation where we are creating a non-conformity. What we have in fact is a two story. With a two-story structure you have to have a ten (10) foot setback. Right now at the property the building is right along the property line. What we are in fact doing is making this less non-conforming. We are moving it in two and half (2 1/2) feet from the property line. Under the Zoning Code Section 2430, which is a unique provision because it talks about the reconstruction of a prior non-conforming use other than one (1) and two (2) family dwellings, we are going to demolish this side. There is going to be a lot of infrastructure improvements which were the subject before the Conservation Commission as well as the Planning Board which have given their approval. We will be moving the building to put some drainage and moving the building that is outlined in the light gray on the plan moving the building in and within the footprint and as such we are not extending or altering on the existing line as it says in the By-Law. We are moving it in and as such we are not creating any non-conformity we are making it less non-conforming by moving it from zero setback to a two and a half (2 1/2) setback. It's a unique piece of property. Cape Street is this area accessed by an easement from the City (pointing to the diagram). This is New Bedford Harbor; there's a pier here. Mr. Weckesser and W. Trading fabricate metal for the marine industry as well as boat repairs. As such what we are trying to do is revitalize the building which basically has outlived its use. There were no photographs taken but would like to show a picture for purposes of what the existing structure is right now.

Mr. Comerford stated that it was a looker.

Mr. Deshaies stated that it's in disrepair. This process has been going on for approximately seven (7) plus, years nine (9) years. We have scaled back considerably the project, this is the minimum Mr. Weckesser can do as far as running a viable commercial marine related facility on the waterfront. The provisions of the Zoning By-Law call that this Board can grant the reconstruction of a non-conforming structure by special permit and we say that we meet squarely within the requirements of a special permit and that a variance is not needed because we are not creating a more non-conforming situation. Under the Board's By-Law, it speaks to the issue whether it's more substantially detrimental to the neighborhood and in one other way in fact it talks in Section

4320 the social economic and community needs this served by the proposal. What we are doing is we're taking a building that is on the waterfront, that has come into considerable disrepair over the past fifty (50) plus years, and demolishing and reconstructing it and it's going to be a metal prefabricated building that is very similar to a lot of the buildings in the immediate area of Cape Street and in that general area. The impact that we are going to take, as Mr. Comerford stated, is take down a looker and put up something more aesthetically pleasing to the community the waterfront as a whole. So he suggests to the Board that it does have sort of an impact. By revitalizing a building Mr. Weckesser can keep six (6) employees working while having what he needs to compete. It also talks about the traffic flow which was the subject with the Planning Board. The Planning Board passed on it favorably. The property actually at this point in time will have seven (7) dedicated parking spaces. We received a special permit from the Planning Board. The neighborhood character and the social structure as he said before has major improvements. For this particular site it does impact the area in general. There is no impact on the environment. In fact, what we are doing with Sr. Project Manager Christine Claire from CLV Engineering as part of doing this whole project the balk head is going to be repaired and it's going to be backfilled. There is going to be on-site drainage infiltration and those technical things that an engineer can speak to and the physical impact is that we are going to have a building that is going to be a looker with a little bit more of a tax bill in the future.

Mr. Gomes stated that was a good thing.

Attorney Deshaies stated that it is for the Board to consider favorably that what they are going to do is revitalize the building by reconstruction. They are not creating any more non-conformity as such they believe they fall squarely within the definition of Chapter 9 Section 2430 for a special permit of reconstruction of the building. He would ask the Board to look favorably upon the petition for a special permit.

Mr. Comerford asked if anyone had any questions for Attorney Deshaies.

None heard.

Ms. Smith mad a motion to receive and place on file the photograph of the existing conditions. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Gomes stated that the petitioner was cutting down on the square footage of the building and asked if he was going to be laying people off.

Mr. Weckesser stated no.

Mr. Gomes stated that he just thought he would ask because Attorney Deshaies mentioned something about six (6) people working.

Mr. Weckesser stated that at one point in time there was thirty six (36).

Mr. Gomes stated bring it back.

Mr. Weckesser stated that he would love to.

Paul Weckesser stated that he is the owner of property at 1 Cape Street which is W. Trading the business that works out of it which he also owns and operates on a daily basis that does mass fabricating and welding. He wanted to give a quick background on the property and stated that when he bought the property roughly ten (10) years ago. He pointed to a diagram and stated that when he bought the property the building actually extended all the way over to here and came down right about this area right here leaving sixteen (16) feet from here to here. We started this permit process roughly nine (9) years ago. Throughout this permit process we had

lengthy court battles with the neighbor where injunctions were attempted to be filed because we were going to rebuild a new structure. Judge Ruffo found in our behalf that we had the right to build the new structure which was going to be a ramp system to launch boats into the water with. We were going to build boats there and we do construct some on our facility. He found in our favor and denied the injunction for that. But yet we saw potential for problems with the neighbor. We spent the last nine (9) years revising, going back and forth to court, court motions, court things, everything else. He has spent over \$300,000.00 in legal and over 42 revisions to the property to try and ease tensions with neighbors. We abut Sprague Energy and they have oil tanks on this side. We abut NSTAR's, he forgot what they call it, where they store all the big compressors and telephone poles on this side. On this side we abut Trio Algarvio the neighbor who is here tonight and across the street is basically just other fishing plants in the neighborhood and everything that we are doing as far as the new build fits in with the neighborhood with the type of buildings that are in the neighborhood. The building that went up directly across the street, it will be the same exact type of building that was put in across the street. Thank you for your time.

Mr. Comerford asked if there was any opposition.

Richard Burke, Beauregard, Burke and Franco Law Firm, 32 William Street, New Bedford stated that he represents Trio Algarvio which is the direct abutter; their address is 26 Greenwood Pier. Their concern about the petition is that, notwithstanding it being described as shrinking the footprint of the building, it's actually, if you look at the amount of square footage that is being added it's adding a story and it's adding square footage. The petition as originally filed indicated that it was already a three (3) story building. He had five (5) sets of documents that he submitted to the Board. The building according to the existing Assessor's records is right now a one-story building. The applicant in one of his applications described it as a one-story building with a mezzanine level. In the application for the special permit it said it already had three (3) stories notwithstanding the City records which seem to contradict. We are glad to hear that the third story that was originally proposed has been reduced somewhat in size so that they can perhaps technically argue that it is no longer a story because of one-third (1/3) of the overall matter but if you look at the City records it's a one-story building now. If the Board looks at the pictures they can see that it is not a three story building it's a one-story building. The square footage, right now it has 9,821 square feet notwithstanding shrinking the footprint somewhat. The original plans call for 12,705 square feet. From what Marc Deshaies stated that in the new plans it is now perhaps 1,000 square feet less as a result of the third story being reduced. But nevertheless if the Board looks at Sheet seven (7), the original plans filed, that's what we are looking at in terms of square feet. It is a substantial increase in the square footage because its adding stories, its going up and as was alluded to, there have been problems with the neighbor on-site as a result of Mr. Weckesser's business expanding over onto the neighbors property and easement violations. His property is relatively small in terms of the outside area. Part of that is an easement that Trio Algarvio has with trucks turning on his property. And he has a limited easement on Trio's property. There have been court hearings about that because it has been violated with hauling overweight equipment on the easement over Trio's property even outside the easement with trucks, with vehicles equipment and also partly that is largely exacerbated by his barge building business. There have been occasions in the past when he's built the barges almost all the way out to the property line which then shift the traffic onto Trio's property. It is true that the Planning Board did approve a reduction in parking but this building as originally proposed in square footage called for, for example nineteen (19) parking spaces and yet only six (6) plus one (1) handicapped spaces were provided and the answer was well we can't park on our own property we'll park on the street. Our concern is that we would not like to see the square footage that is there now which is described as 9,821 being enlarged because the bigger his building is the more stories he has the more impacts we are concerned is going to force over onto our property. As the Board knows in evaluating special permits one of the primary factors is the impacts on the neighborhood. We are the immediate neighbor that receives these impacts. We have a concern that what has been proposed, even though the mezzanine level or what was the third story has been shrunk, if they are going from one (1) or one and a half (1 1/2) stories to three (3) stories under the Zoning By-Law that would increase what the Zoning By-Law requires for the rear yard setback. Right now as you can see on the plans they have somewhere less than 2.5 feet. Under the Zoning By-Law

under Section 2400, 2432 any reconstruction of a non-conforming structure, and this is clearly a non-conforming structure, which increases an existing non-conformity or creates a new one must require a variance and any thing that requires a variance or increases non-conformities is not eligible for a special permit.

Mr. Comerford asked if Mr. Burke could explain to him how adding height to the structure would increase non-conformity.

Attorney Burke stated that if they go from one or two stories, although they claim in their application they had three (3) to begin with but the City records do not support that and their own records do not support that. Under the Zoning By-Law when you go to three (3) stories that's when in the Waterfront Industrial District, this is the very last page of the Zoning By-Law, the Schedule Section, in the Waterfront Industrial District, ten (10) feet rear setback is required for one (1) to two (2) story buildings, twenty (20) is required for three (3) or more.

Mr. Comerford stated that Attorney Burke's point of argument is that that would increase its non-conformity because it would be a three story.

Attorney Burke stated that that would make what's only 2.5 feet here, that's already under (10). They have a greater setback requirement. So there is an impact which the By-Law recognizes. Their concern as he stated before is the increase in the square footage. When he has more square feet to work with it's going to create more impact. He is way under what the City would require just for on-site parking. Our impacts have been not just physical parking but traffic going onto our property because there is not enough room on his property either when he is building a barge or he's storing his two (2) cranes. When he is storing cranes, it forces all the traffic onto our property and there have been, as Mr. Weckesser described as complaints about his building plans, but our complaints are about property issues and property impacts. He put in the materials that there was a court ruling by the Superior Court that found numerous property violations and issued injunctions and they have to go back to court two different times because on two different occasions the Superior Court judge found him to be in contempt of court for violating the rulings put in the materials. Since then there was an appeal that both sides have taken of the original court ruling and it actually narrowed further what he can do on the Trio property. Previously he had been having all these forklifts and cranes directly on the Trio's property and he also said he can't do that anymore that was intended for truck access not for his vehicles. When they do that they typically carry steel beams and other steel materials when they are swinging steel in the airspace over the Trio property. There have been very serious property issues which unfortunately have required court intervention multiple times. We have some very real concerns and unfortunately they relate to the type of business that Mr. Weckesser wants to do on this property but it has just too little space to accommodate the type of business he wants to run and our concern is that by adding stories from one (1) to three (3) or even one (1) to two and a half (2 ½). Clearly the original plans as filed call for a third story and the only way they can do that is if they had three (3) already which they clearly, according to the City records, do not. We would submit that a variance is required by the original plans and the Board shouldn't grant a special permit. A variance is required and even if the variance is not required even if it's strictly a special permit case because they have now reduced somewhat this third mezzanine level to try to avoid the problem created by getting into a third story. If the Board looks at the square footage, there has been a lot of talk about the footprint of the building being smaller, but clearly on their plans, the square footage is getting bigger so we would ask that any special permit that be granted limit the available space to what is there already given the severe impacts that we have been already experiencing. Thank you.

Kenneth Ferreira, Civil Engineer Land Surveyor, stated that he spent twenty three (23) years on the Zoning Board in his town. There is always this gray area for reconstruction, alteration of existing structures. The law talks about looking at the massing in structure and what the overall affect is. Clearly if the Board looks at the photographs of the existing structure it is a one story building. In regard to how the statute reads in New Bedford about stories and mezzanine levels that clearly relates to having requirements, warehouse requirements, how many parking spaces you need. But if you look at the Building Plans, he doesn't think there is any doubt if

you look at building plans like this that's 34' high and you see the garage door and then you second level garage door you see windows on the third floor, this is clearly intended to be a three story structure. Anybody driving by, an assessor, or anyone else looking at this building without going in and measuring the exact footage of the mezzanine this is a three story structure and the state law clearly states that you cannot have any new non-conformity and by going up to a third level would require a 20 foot offset. A two story structure you may be able to grant a special permit and maintain his non-conformity but because the Zoning By-Law clearly states a special requirement of ten (10) more feet is added to the twenty (20) bring it twenty (20) from ten (10) one (1) and two (2) story structures that's clearly when you look at a three story building. What the effect is as you drive by in regards to mezzanine spaces you have to find that a variance is required.

Mr. Comerford if anyone had any questions for the people who spoke in opposition.

Mr. Comerford stated that he knows there is a lot to it. It seems like no matter what our decision is it's going to go to court anyways. It seems that it hasn't worked out for ten (10) years and it's not working out tonight. He really hates to see things happen like this because it's not necessary. He sees the point Attorney Burke is trying to make that if it's a third story they need twenty (20) feet and that requires a variance. He sees that as their take on it and they are trying to make the argument that the petitioners are creating a more non-conforming structure. He doesn't see how it can be more non-conforming. It's a small lot, it's currently on the property line, and it's an eye soar. He is trying to revitalize his business, the neighborhood, and the waterfront. It's good for everybody in New Bedford not just for the owner. He thinks it's good for everybody so maybe Attorney Burke can elaborate a little more on how reducing the current footprint of the property while possibly adding a mezzanine level or about having a mezzanine level would make it more non-conforming.

Attorney Burke stated that from their point of view that it's as simple as square footage. If you add square footage to your building so you can do more business, there are going to be more impacts that spill over as a result of the business expanding. So the original proposal, the math was that there was 9,821 square feet right now of usable area that they do business at and they wanted to go to 12,705 and the third story was 3,190 square feet as originally proposed. They are adding a little less than 3,000 square feet to their building under their original plans. Even if they are adding not 3,000 but 2,000 square feet to a building that was less than 10,000 square feet that's approximately a twenty percent (20%) increase in the business that is going to go on in that building. The Waterfront Industrial District is zoned to do a lot of different things. He even describes in his application that he has really a retail, warehousing, manufacturing, he's servicing fishing vessels, he's building barges so there are a lot of business that could really go in that property and so if he increases the amount of business he can do by twenty percent (20%) or so even ten percent (10%) when there are already major impacts that courts have said that violate property rights multiple times and it's not insignificant because it impacts our ability to do our business and it takes away property rights. Our concern is that as the square footage available to do business goes up the impacts go up. The bigger the business, the bigger the impacts, as simple as that.

Ms. Smith asked Mr. Romanowicz that one of the issues in this very complex hearing is the determination that it's a special permit as opposed to a variance.

Mr. Romanowicz stated that was correct. Before he made a decision on this case he got an opinion from the City's Attorney and Jane Friedman said special permit. So he can hang his hat on what she said. He went directly to the source.

Mr. Gomes stated that he was looking at Mr. Romanowicz before because he was going to ask him who made the decision for them to apply for a special permit as opposed to a variance. He's glad Ms. Smith asked the question and that answers his question. He further stated that Mr. Romanowicz did not make that determination it was the Legal Dept.

Ms. Smith stated that he got legal counsel on it.

Mr. Gomes stated that with these cases his philosophy is, he's been on the Board since 1972 and his philosophy has been vote one way or the other because no matter what you do it's going to wind up in front of the guy with a black robe and he gets paid big bucks to make the decision and he's a lot smarter than him.

Ms. Smith asked to make a motion for procedural purposes and made a motion to receive a place on file the packet submitted by Attorney Burke of what seems to be the Assessor's Field Cards, Building Dept. records. Motion seconded by Mr. Gomes. With all in favor, motion carried.

In rebuttal, Attorney Deshaies stated that the building originally had a gross square footage of 14,145 square feet.

Mr. Comerford asked; what was the date, when it was that many square feet.

Mr. Weckesser stated that it was about eight (8) years ago. As he stated before, pointing to the diagram, he said that the building use to come out to here and down to here which gave it a footprint of 14,145 square feet but we are reducing to the 12,000 total square feet.

Mr. Deshaies stated that one of the things that there was a lot said about, and he has tried to refrain from getting into the legal issues because the Board is not the arbiter of property law. As Mr. Gomes says it's the guy who wears black pajamas during the day. You are not sitting on the Board as an arbitrator of property law rights. What we have here and he will admit that in the original application he said three (3) stories. The Assessor's records say one (1). At this point, he has a photograph that shows the interior of the building and it is a two story. You can see the work floor is on the ground level and you can see stairs that are means to get up to the office area and storage that Mr. Weckesser has at the property. The issue about going up, this is a red herring in his opinion. It's a two-story building; the Zoning By-Law defines a two story. We are not creating three stories. It is two stories and a mezzanine level storage. It's as simple as that. We meet squarely the definition of what is considered to be a story. There's a story on the first level, on the second level, and on the third level we have less than one-third of the gross square footage and as such it is not a story. We are taking a two-story building and it's going to be a two-story building. The interior use is not something that is regulated by the special permit or anything like that and we would not agree to any limitations on, as Mr. Burke said, we shouldn't be allowed to do or have more square footage. Well, we have the 6,300 square feet; you have all this open area. There's going to be a lot of open volume. At this point he thinks it's best that he states that what they are doing is revitalizing a building by reconstructing within the footprint not increasing the non-conformity and the City's Zoning By-Law, which provides regulations for one story, but it doesn't specify how far you can go up. It does say if you go up three (3) you have to meet a certain requirement. We only have two stories here and as such he believes they are entitled to a special permit.

Mr. Mathes stated that he had a question for Mr. Weckesser. He asked; if at his previous or current level of operations, has his business-activity infringed upon the abutting property.

Mr. Weckesser stated no. The time that Mr. Burke was speaking about that the judge found him in contempt was because Trio does have an easement of a part of this area (pointing to diagram) to get trucks to the gate. Judge Ruffo ruled in the ruling that he had a right to use his property in a manner which did not obstruct trucks from entering and exiting the gate. I have cars and cranes parked over here. He didn't think it was in the way. Judge Kane stated that if a crane is there then, how could a truck go there. This fence comes out down here and he thought that was within what Judge Ruffo had ordered. Judge Ruffo stated that he had the right to use the property in a manner in which did not obstruct truck driving and he never figured that a truck would come all the way up here with a fence here trying to get the get gate here. Why would they come up in here to go way, this to go this way, to go this way even though their building is over here. He figured they would go in this manner. So Judge Kane found me in contempt technically but did not fine me because it was a technical type of

violation. Judge Kane later revised it to say do not park specific things in this area at which time he believes that might have been two (2) to three (3) years ago there have been no violations. When the order clarified there have been no events and that was one of the reasons, like he stated and showed earlier, that the building use to come out to here, we originally had structure coming back to there. Judge Ruffo ruled when they tried to get an injunction to stop that, that I was within my rights to do that and he refused to give the injunction. We saw potential problems and we saw that maybe they will be going over across the property so that's why we cut the building down in this area which people come in. It's like going to Kmart and Sears is next door, people park the closest possible place to the door. We put signs up everywhere but people who do not know the property, salesman come out sometimes and they would come in and we figured well if we build the building here we are well within our rights but people would park there. So we squished the building down pulled it over here so that when people did come in it would create a traffic flow that would come in and go right to the building well within our property and leave all this open for bystanders or whoever.

Mr. Mathes stated that he wanted Mr. Weckesser to know where he was coming from. He is not a judge and he's not the jury. He's just trying to figure out why two people who own property, spent hundreds of thousands of dollars fighting for ten (10) years.

Mr. Weckesser stated that he can't figure it out.

Mr. Mathes stated that his question to Mr. Weckesser in his role there is do you feel that you have done nothing to infringe upon another property owner's rights and you said no and you answered the question about the contempt.

Mr. Weckesser stated that throughout the years as he stated before, he has an easement that comes across the property like this down here and then over this manner like this shape (pointing to diagram) and he thought he had an easement to do it. It said he had an easement to gain access to his trucks being that this building use to come out to here and there use to be loading docks here and this use to be a fish plant. He figured he was within his limits. After years of court battles and judge after judge after judge, every judge seems to interpret something a little bit different. They think you're doing the right thing one way and the next judge interprets it a little different and sometimes he feels like he has someone grabbing him on every limb. They have made forty (40) revisions from their original plan to try and pull everything in, push it down, squish it down, and the building as you can see use to actually be a lot taller than that.

Mr. Mathes interrupted and stated that he gets it. He's just saying that they have had an impression upon judges and Boards and people like us. But to him, he is sitting there trying to figure out why.

Mr. Weckesser stated that he wanted to point out that NSTAR abuts him and Sprague. He spoke to them and they do not have any problems and they are the ones that he is closest too.

Mr. Comerford stated if there was any in favor rebuttal.

Mr. Comerford asked for opposition.

Atty. Burke stated that he knew Mr. Weckesser wanted to minimize it but honestly the courts don't grant injunctions lightly it's very high standard and there has to be irreparable harm in order to justify an injunction. Courts don't grant civil contempt judgments lightly there has to be a clear violation of a court order to do that and it's unfortunate but when you have trucks and cranes and other things on your property that create dangerous situations that don't have a right to be there that's why we were in court. Mr. Weckesser alluded to it when the building was larger as he said it was a freezer plant and so what this was originally designed for was for tractor trailers. Trio's business is a seafood processing business, and the Weckesser building as shown on the original plan it's called Freezer Building and the trucks would come in the common area and back into the

loading docks and leave. When he came in, his business is completely different. He's not using it for the purpose of truck access the way it was originally intended. He had at one time, barges built on his whole property out to the property line and he had men and cranes on Trio's property working on it and going back and forth all day over Trio's property working on them. The reason is because the way this property is set up it's really not ideally set up for the type of business he wants to conduct there. He needs more room to build barges and to operate cranes and not do it on someone else's property when he doesn't have the right to do it on. And it's a dangerous thing, which the court found when you have steel beams being swung in the air over your property, and you're trying to use your property at the same time that was a dangerous situation. That's one example so he thinks the problems have arisen as a result of the nature of his business. The size of the building he has now it has already caused major problems for the abutter which courts have recognized. Not just us saying it and he doesn't think it's fair to make light of our judicial system after trials, after witnesses, after engineers, and all the testifying regardless of how many stories there are if his square footage is going up he's going to have more business flow going on and he doesn't have the room to do it right now. That's all. Thank you.

Ms. Smith made a motion to receive and place on file the image of the interior of the building. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Ms. Smith stated that she had a lingering question for Mr. Romanowicz and asked; how do we, if we are to, reconcile the issue of what the Assessor's records say and the Building Inspector says about it being a one story that those in opposition have submitted to us. Is that something we need to think about right now that the City records say one story but we are being shown differently?

Mr. Romanowicz stated that he could not tell Ms. Smith what the Assessor saw. He saw an outside visual. You have a picture that clearly shows it's two inside. He may have driven by and saw what it is. What we use at the counter when someone comes in and says it's a two family house, we look at the card, he says it's a two family but the Assessor has it as a three they are just going to say what they want to say for tax purposes and it might not be correct with putting it down. You have one person putting it in and another person putting it into the computer. That's something that he can't really answer.

Mr. Mathes stated that one of the big deals about our country is about property ownership and the rights of a property owner and this is what this is; two property owners, and who has the right to do what and clearly this gentleman feels that he has the right to do what he does and the abutter clearly feels that abutters property rights are not being respected. He wants people to be able to do what they want with their property, this in particular is creating wealth for the owner. In rehabbing a dilapidated building and putting something up that's better, it's an improvement to the City's infrastructure. He wants to see stuff like that but by the same token in a way that doesn't infringe upon others. The two people here flat out disagree whether that's the case or not it is in his lap to make a vote on, in his mind he really wants to be able to weigh in on that, but he will never know as much as they know about all the stuff with the court cases. At the end of the day, I wouldn't do something with my property that I know my neighbor would not want me to do that I was detracting from the property. All he would have to go on without having sat through court cases or reading all the documents related to them to sort of gauge how serious that abutter feels. Just the record with how much money has been spent battling over this and he can't see how his ability to do more with more property doesn't exacerbate the problems. He struggles with this. He knows people who own properties and want to be able to do more and better and more marketable, but they couldn't do it where they were and he knows someone who didn't because he had no room where they were.

Mr. Comerford stated that he was thinking that with more storage space could it actually take away the number of deliveries coming in now and he doesn't know if that's the real problem. They obviously have issues there.

He thinks they need to remember that they are not voting on the status of the relationship between the two abutters.

Mr. Mathes stated that how they vote will affect the abutters and he wants people to be able to do what's okay for them to do within the law on the property. He doesn't question it, it's a commercial property and he wants him to be successful in business. That's his background wanting to see people successful in business but it can't be at the expense of someone else. So he thinks it's wholly within, at least for him, how he thinks about approaching something like this. It's not an easy decision this is no 80/20 this really is a very difficult decision that is going to have an impact on, a mega impact on one party.

Ms. Smith stated that it is a complex case there are a lot of layers and you're right we need to read through what is before us for us to rule on. She doesn't know if any of them feel there could be any other information that we need in front of us to make a more informed decision and we continue it, but if there is nothing to learn between now and that date then there isn't. She's just throwing that out there. She doesn't ever want to rush to judgment. Is this really all we need to make the decision? She's tending to think so but she looks to their expertise to say no we really should pursue this aspect of it because we want to do the right thing. It's sort of an open-ended question to you all.

Mr. Mathes asked if their staff recommends that they grant this?

Ms. Smith thanked Mr. Mathes for saying that because she did want to ask. As all of you, many if not all of you know, part of what we get to help us make a decision is a recommendation from the Planning Dept. She thinks all of them have weighed it differently in how they make their decision. Ms. Smith then stated to Mr. Ray Khalife that he actually did make a recommendation to them written on October 24<sup>th</sup> based on the old plans.

Mr. Khalife stated yes.

Ms. Smith then stated that they then saw a revised set dated November 17<sup>th</sup> she believes was the memo and the revised plans and asked Mr. Khalife if he would write the same recommendation to them based on the new plans.

Mr. Khalife stated that he would; yes because in his mind they have shrunk the volume of the building and based on that alone, he would write the same thing.

Mr. Mathes asked if he shrunk the volume of the business.

Ms. Smith stated that he shrunk the volume of the size, the square footage.

Mr. Gomes stated that the fact of the matter is when they start getting worried, there is an excellent reason why lay people should get appointed to these Boards and Commissions, because once they start appointing professionals that deal with this stuff all the time to this craziness they would still be dealing with the first case. We have two attorneys here on opposite sides and got vastly different opinions from both of them and it depends on where your head is. He stated that he looks at this stuff and he says to himself wait a minute does he meet the criteria for a special permit. Yes. Now the other guy is saying it shouldn't be a special permit it should be a variance. But then he thinks about that and says okay he got in line for a special permit. If he applied for a variance would he have met the criteria for the variance and he says yeah to himself. But then he says wait a minute I'm going to vote for the special permit and let the guys who have the expertise in looking up Chapter 92, 48 and everything else because that's not his bank. He reads and looks at it and says okay. We have done that with cases today when we looked at it and said they met the requirements for a special permit. I'm going to vote for that. This case is a little more complicated because this case has two different opinions.

Mr. Tavares stated that in his knowledge he owns a building and a business, the bigger building is not more business sometimes. He does heavy work too. We want to increase the building, the business is what he was talking about, it's going to be more costly with guys working. That's his opinion. This is a very sensitive case. The building increase does not always mean double the business.

Mr. Comerford stated that he thinks that everything they have heard is in front of them and he doesn't think tabling it to another date would solve anything. They have been fighting for nine (9) years, they'll probably fight for nine (9) more and he doesn't think anything will change. We have all this information I don't think anything else that can be added.

Mr. Gomes asked if they were thinking about tabling it and asked why.

Ms. Smith stated that she wasn't thinking that at all but because it is so complex she didn't want to make anyone feel they didn't have enough information to make a formal vote.

Mr. Gomes stated that there is an abundance of information on this case.

Mr. Tavares stated that they should have a vote and it depends on how they feel about it.

Mr. Gomes stated that he hates it with a passion, and he's done it more times than he can think of on this Board in the amount of time he has served on the Board, and that's being a referee in a neighborhood fight. He hates it with a passion.

Ms. Smith stated that they stick to the technical piece of this and was happy to make a motion.

Ms. Smith made a motion to grant Appeal # 4047 a Special Permit under provisions of the City Code of New Bedford to W. Trading, INC. 1-5 Cape Street New Bedford, MA 02740 and Marc R, Deshaies, Esq. Ellyn H. Hurd, Esq. Perry, Hicks & Deshaies, LLP, 388 County Street New Bedford, MA 02740 relative to property located at 1- 5 Cape Street Assessor's Map Plot 42, Lot 260 in a Waterfront Industrial Zoned District and to allow the petitioners to demolish the existing prior non-conforming structure with a gross square footage of 9,821 and three stories, and reconstruct a new commercial structure with a gross square footage of 6,325 square feet within existing footprint and relieve the petitioners of Chapter 9, Comprehensive Zoning Sections, 2400 (Nonconforming Uses and Structures), 2410 (Applicability), and 2430-2432(Non-Conforming Structures Other Than Single and Two Family Structures) and that the project be set forth according to the revised plans and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Gomes.

Roll call vote:

Horacio Tavares – Yes

Jennifer Smith – Yes

Ian Comerford – Yes

James Mathes – Yes

Donald Gomes – Yes (Before Mr. Gomes voted he wanted to say that there are times when he disagrees with the Planning Dept. and he will vote against their recommendation, he has done that often, there are also times that he agrees with their recommendation and votes along with their recommendation. In this case, he agrees with their recommendation and the reason they came to that recommendation was because they said they do not believe that this reconstruction shall be substantially more detrimental than the existing non-conforming structure to the neighborhood)

Motion passed.

**Old & New Business:**

**Request for an extension of time to two variances #3999 and #4000  
(233 England Street) granted on 10/10/2010 (continued from Oct. 27, 2011)**

Mr. Smith stated that the petitioners had been present and that Mr. Khalife took care of it. They waited the whole time and the Board appreciates that.

Mr. Khalife informed The Board that he let the petitioners go because he didn't want them to wait unnecessarily. He explained that the petitioners had put in a request for an administrative change to the two variances because they could not record them at the Registry of Deeds. **The reason is that the granted decisions had different lots number than that of the Land Court. More of a technical change to the lots description.** He further explained that he met with the recording administrator at the Bristol County Registry of Deeds who suggested the proposed change to the lots descriptions in order for the petitioners to get the variances recorded. The motion in the decisions remained unchanged.

Mr. Mathes approves the changes.

Mr. Comerford asked if everyone approved the administrative changes.

Mr. Gomes, Ms. Smith, and Mr. Tavares all approved the changes.

**Approval of Meeting Minutes**

Ms. Smith motioned to accept the ZBA minutes of meeting held on October 27, 2011. Motion seconded by Ms. Mathes. With all in favor, the motion carried.

**Next ZBA Meeting**

The next ZBA meeting is scheduled to be held on January 5, 2012.

**Adjournment:** There being no further business, a motion to adjourn was made by Ms. Smith and seconded by Mr. Gomes. With all in favor, the motion carried. The meeting was adjourned at 8:55 p.m.

Respectfully submitted,  
Michelle Feitor

**CERTIFICATE AS TO MINUTES OF MEETING OF ZONING BOARD OF APPEALS**

I, Annette Allard, Clerk for the City of New Bedford Zoning Board of Appeals, certify that the above is a true and correct transcript from the minutes of the meeting of Board of Appeals, for the City of New Bedford held at 5:30 pm on December 1, 2011, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Massachusetts and bylaws of the City of New Bedford and that a quorum was present.

I further certify that the votes and resolutions of the Zoning Board of Appeals for the City of New Bedford at the meeting are operative and in full force and effect and have not been annulled or modified by any vote or resolution passed or adopted by the Board since that meeting.

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*Annette Allard, Clerk*